

DEC 12 2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

SIERRA CLUB and)
SOUTHERN APPALACHIAN) Civil Action No. 2:08cv00036
MOUNTAIN STEWARDS, INC.,)
Plaintiffs,)
v.)
DIRK KEMPTHORNE, et al.) FINAL ORDER
Defendants.) BY: GLEN M. WILLIAMS
) SENIOR UNITED STATES DISTRICT JUDGE

This case is before the court on the defendants' motions to dismiss and the parties' cross-motions for summary judgment. This case was referred pursuant to 28 U.S.C. § 636(b)(1)(B) to the Honorable Pamela Meade Sargent, United States Magistrate Judge. On October 15, 2008, the Magistrate Judge filed a Report and Recommendation, (Docket Item No. 82), ("Report"), recommending that the court deny the defendants' motions to dismiss, deny the plaintiffs' motion for summary judgment and grant the defendants' motions for summary judgment. The Magistrate Judge further recommended that the court vacate the preliminary injunction that was entered on August 4, 2008. Upon a review of the Magistrate Judge's Report and the objections filed thereto, the court is of the opinion that the Report should be **ACCEPTED**.

For the reasons detailed in the Memorandum Opinion accompanying this Order and entered this day, the defendants' motions to dismiss are hereby **DENIED**. The

court further notes that it is in total agreement with the Magistrate Judge's ultimate recommendations; however, as explained in the Memorandum Opinion, the parties mutually agreed to submit the entire case to the court on the merits. Accordingly, this court will not make a specific ruling as to the cross-motions for summary judgment, but, instead, will simply enter judgment on the merits in favor of the defendants. In addition, this court **DENIES** the plaintiffs' request for entry of a permanent injunction and hereby **VACATES** the preliminary injunction, which was entered on August 4, 2008.

The Clerk is directed to enter this Order and to send copies of this Order and accompanying Memorandum Opinion to all counsel of record. The Clerk is further directed to strike this case from the docket of this court.

ENTER: This 12th day of December 2008.

/s/ Glen M. Williams

THE HONORABLE GLEN M. WILLIAMS
SENIOR UNITED STATES DISTRICT JUDGE